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4 JAMES ARTHUR,  
5 Plaintiff,

6 v.  
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8 CONSTELLATION BRANDS, INC., et al.,  
9 Defendants.  
10

11 Case No. 16-cv-04680-RS  
12

**ORDER GRANTING, IN PART, AND  
DENYING, IN PART, MOTION TO  
STRIKE AFFIRMATIVE DEFENSES IN  
ANSWER**

13 **I. INTRODUCTION**

14 Plaintiff James Arthur claims he was improperly terminated from employment at a winery  
15 operated by Defendant Constellation Brands. He now moves to strike all twenty affirmative  
16 defenses in Constellation's answer to his complaint. Arthur argues that all of the defenses fail to  
17 give fair notice of the grounds on which they rest and several are not affirmative defenses at all,  
18 but denials of the complaint's allegations. For the following reasons, Arthur's motion is granted  
19 in part and denied in part.<sup>1</sup>

20 **II. BACKGROUND**

21 Arthur began working as a temporary employee at a winery, allegedly operated by  
22 Constellation, in June 2015. In October 2015, his wife was diagnosed with breast cancer. In the  
23 months that followed, he frequently requested time off to care for her. In May 2016, Arthur  
24 informed his supervisors that he was looking for permanent employment with medical benefits. In  
25 response, he alleges, they offered him a permanent position at the winery. Thereafter, he informed  
26 them that he had filed for paid family leave. The following day, he says, his supervisors rescinded  
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28 <sup>1</sup> Pursuant to Civil Local Rule 7-1(b), this matter is suitable for disposition without oral argument.

1 the offer and terminated his employment because of his “availability and time management.”  
2 Compl. ¶14. Arthur claims that Constellation used “availability and time management” to  
3 disguise discrimination. He brings eleven claims against Constellation, including for violations of  
4 the Family Medical Leave Act (“FMLA”), the Fair Labor Standards Act (“FLSA”), the Americans  
5 with Disabilities Act (“ADA”), California Family Rights Act (“CFRA”), the Fair Employment and  
6 Housing Act (“FEHA”), and California’s fair wage and competition laws.

7 In its answer, Constellation admits it operates a business, but denies that it owns or  
8 operates the winery where Arthur worked. Constellation denies it ever employed or terminated  
9 Arthur. Constellation admits that it sent Arthur an offer letter in May 2016, but denies it was an  
10 unconditional offer of employment. Constellation asserts twenty affirmative defenses, which it  
11 seems to contend apply equally to each of Arthur’s eleven claims. Arthur moves to strike all  
12 twenty affirmative defenses. Constellation opposes the motion but agrees to withdraw affirmative  
13 defenses 17 (at-will employment) and 20 (reservation of all rights).

### 14 III. LEGAL STANDARD

15 A court may strike affirmative defenses under Federal Rule of Civil Procedure 12(f) if they  
16 present an “insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter.”  
17 A defense is insufficiently pleaded if it fails to give the plaintiff fair notice of the nature of the  
18 defense. *See Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir. 1979). A matter is  
19 immaterial if it has no essential or important relationship to the claim for relief pleaded. *See*  
20 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S.  
21 517 (1994). A matter is impertinent if it does not pertain, and is not necessary, to the issues in  
22 question in the case. *Id.* The purpose of a Rule 12(f) motion to strike is “to avoid the expenditure  
23 of time and money that must arise from litigating spurious issues by dispensing with those issues  
24 prior to trial.” *Fantasy*, 984 F.2d at 1527. A motion to strike should be granted if it will eliminate  
25 serious risks of prejudice to the moving party, delay, or confusion of issues. *Id.*, at 1527–28.

26 Motions under Rule 12(f) are generally disfavored, since such motions are frequently used  
27 as stalling tactics and since pleadings are of more limited importance in federal practice. *See*

1       Platte Anchor Bolt, Inc. v. IHI, Inc., 352 F.Supp.2d 1048, 1057 (N.D. Cal. 2004). If there is any  
2 doubt whether the challenged matter might bear on an issue in the litigation, the motion to strike  
3 should be denied, and assessment of the sufficiency of the allegations left for adjudication on the  
4 merits. *See Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970 (9th Cir. 2010). Some courts also  
5 refuse to grant Rule 12(f) motions unless prejudice would result to the moving party from denial  
6 of the motion. *Platte*, 352 F.Supp.2d at 1057. When striking a claim or defense, leave to amend  
7 should be freely given if doing so does not cause prejudice to the opposing party. *Wyshak*, 607  
8 F.2d at 826.

#### 9                          **IV. DISCUSSION**

10                         Arthur moves to strike Constellation’s affirmative defenses, contending they are defective  
11 in two ways: (1) all fail to provide fair notice of the grounds on which they rest; and (2) most are  
12 negative, rather than affirmative, defenses.

##### 13                         **A. Insufficiently Pleaded Defenses**

14                         “The key to determining the sufficiency of pleading an affirmative defense is whether it  
15 gives plaintiff fair notice of the defense.” *Wyshak*, 607 F.2d at 827 (citing *Conley v. Gibson*, 355  
16 U.S. 41, 47-48 (1957)). Courts in this district have generally construed “fair notice” to require  
17 that affirmative defenses satisfy the *Twombly/Iqbal* plausibility standard. *See Hernandez v. Dutch*  
18 *Goose, Inc.*, Case No. C13-3537 LB, 2013 WL 5781476, at \*4 n.2 (N.D. Cal. Oct. 25, 2013). The  
19 Ninth Circuit, however, recently held that an answer requires “only describing the defense in  
20 ‘general terms,’” *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015) (quoting 5  
21 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1274 (3d ed. 1998)).  
22 It did not, however, explicitly find the *Twombly/Iqbal* standard inapplicable to affirmative  
23 defenses. In any event, as discussed below, most of Constellation’s affirmative defenses fail to  
24 satisfy even the more forgiving “fair notice” standard. At minimum, “fair notice” requires some  
25 pleading of facts: “Neither mere reference to a legal doctrine, nor a bare recitation of statutory  
26 provisions, provides fair notice of an affirmative defense absent some fact or argument explaining  
27 the defense.” *Barrilleaux v. Mendocino Cnty.*, No. 14-cv-1373, 2016 U.S. Dist. LEXIS 46078

1 (N.D. Cal. Apr. 4, 2016). In *Wyshak*, the Ninth Circuit found that an affirmative defense that  
2 “plaintiff’s claims are barred by the applicable statute of limitations” provided fair notice because  
3 it was supported by an attached memorandum making “specific mention” of the statute of  
4 limitations on which the defendant relied. 607 F.2d at 827. The Ninth Circuit concluded that  
5 “under these circumstances the statute of limitations was adequately pleaded,” *id.*, implying that  
6 without the memorandum, the defense would not have given fair notice.

7 Most of Constellation’s affirmative defenses merely refer to legal doctrines. For example,  
8 the first affirmative defense states that “[t]he Complaint, and each cause of action therein, is  
9 barred due to plaintiff’s failure to timely exhaust the required administrative remedies.” Yet,  
10 Constellation fails to identify any specific administrative remedies that Arthur should have  
11 exhausted. Neither the FLSA nor FMLA require a plaintiff employee to exhaust administrative  
12 remedies before filing a claim in federal court. *See* 29 U.S.C. §§ 2617, 216(b). Likewise, FEHA  
13 and CFRA do not require exhaustion beyond that plaintiffs obtain a notice of right to sue before  
14 pursuing their claims in court, *see Mora v. Chem-Tronics, Inc.*, 16 F. Supp. 2d 1192, 1201 (S.D.  
15 Cal. 1998), and Arthur alleges he obtained these notices in July 2016.

16 Constellation’s second affirmative defense fares no better. It states that Arthur’s claims are  
17 barred by “all applicable statutes of limitation, including but not limited to those found at  
18 California Code of Civil Procedure Sections 335.1, 337, 338, 339, 340, 343; California Labor  
19 Code Sections 203, 2699 et seq.; California Government Code Sections 12960 and 12965;  
20 California Business and Professions Code Section 17208; 29 U.S.C. Sections 255 and 2601; and  
21 any other applicable statutes of limitation.” As an initial matter, the catchall “all applicable  
22 statutes of limitation” does not give fair notice. *See Solis v. Zenith Capital, LLC*, 2009 WL  
23 1324051 (N.D. Cal. May 8, 2009) (“[The] legal conclusion that the complaint ‘is barred by the  
24 applicable statutes of limitation,’ is inadequate to provide ‘fair notice’ of this defense.”).  
25 Moreover, Constellation does not assert how Arthur’s claims are foreclosed by the statutes listed.  
26 Indeed, the first statute to which Constellation refers, California Code of Civil Procedure § 335.1,  
27 is the statute of limitations for negligent assault and battery. None of Arthur’s claims relate to

1 assault or battery. As pleaded, this defense does not provide fair notice to Arthur and includes  
2 allegations impertinent to his claims.

3 Affirmative defenses 3, 5, 7-13, 15, 18 and 19 fail for similar reasons. For instance, the  
4 third affirmative defense asserts that the exclusive remedy for Arthur's injuries is "provided under  
5 the workers' compensation laws of California," but Arthur does not allege he was injured in the  
6 course of employment. The seventh affirmative defense asserts Arthur's "contributory/  
7 comparative negligence," but the "proposition that contributory or comparative negligence applies  
8 in the employment discrimination context in the absence of a negligence claim" is unsupported.  
9 *Ingram v. Pac. Gas & Elec. Co.*, No. 12-CV-02777-JST, 2014 WL 295829 (N.D. Cal. Jan.27,  
10 2014). The nineteenth affirmative defense states, "[t]o the extent Plaintiff signed a valid and  
11 enforceable arbitration agreement, Plaintiff cannot proceed with his Complaint in this Court," but  
12 Constellation does not allege that it entered into an arbitration agreement with Arthur. Affirmative  
13 defenses 8, 11, 13 and 15 all essentially assert that Constellation's conduct was undertaken for  
14 legitimate reasons.<sup>2</sup> Without further specificity, they are redundant of the sixteenth affirmative  
15 defense that Constellation acted with a "legitimate business purpose," which is discussed below.  
16 Accordingly, affirmative defenses 1-3, 5, 7-13, 15, 18 and 19 are stricken with leave to amend.

17 **B. Remaining Defenses**

18 Arthur argues that the remaining defenses—4, 6, 14 and 16—should be stricken because  
19 they are just denials of elements of his claims, not affirmative defenses.<sup>3</sup> "A defense which  
20 demonstrates that plaintiff has not met its burden of proof as to an element plaintiff is required to  
21 prove is not an affirmative defense." *Zivkovic v. S. Calif. Edison Co.*, 302 F.3d 1080, 1088 (9th  
22 Cir.2002); *see also Barnes v. AT & T Pension Ben. Plan-Nonbargained Program*, 718 F. Supp. 2d  
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<sup>2</sup> The eighth affirmative defense also alleges that the conduct in the complaint is a just and proper  
25 exercise of management's discretion. Yet, common-law "managerial privilege" does not apply to  
26 statutory claims. *See E.E.O.C. v. Interstate Hotels, L.L.C.*, No. C 04-04092 WHA, 2005 WL  
885604, at \*2 (N.D. Cal. Apr. 14, 2005).

27 <sup>3</sup> Arthur argues that other defenses are negative defenses too, but those arguments need not be  
reached in light of the conclusion that the other defenses are insufficiently pleaded.

1 1167, 1174 (N.D. Cal. 2010) (citing *Roberge v. Hannah* \*1174 Marine Corp., No. 96-1691, 1997  
2 WL 468330, at \*3 (6th Cir. 1997)) (“An affirmative defense, under the meaning of Federal Rule of  
3 Civil Procedure 8(c), is a defense that does not negate the elements of the plaintiff’s claim, but  
4 instead precludes liability even if all of the elements of the plaintiff’s claim are proven.”).

5 In response, Constellation argues that these defenses are properly characterized as  
6 affirmative defenses. It further contends that, if they are not affirmative defenses, they should be  
7 construed as specific denials. Constellation asserts that, if these defenses are mere denials of  
8 Arthur’s prima facie case, it is difficult to understand how they will cost Arthur further time and  
9 expense beyond bringing his prima facie case.

10 The remaining affirmative defenses do not necessarily deny elements of Arthur’s prima  
11 facie case. For example, affirmative defense 6 asserts that Constellation might later acquire  
12 evidence of wrongdoing that would have led to Arthur’s termination on legitimate grounds if  
13 known earlier. *See McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352, 362 (1995).  
14 Affirmative defense 16 alleges that legitimate business purposes justified Constellation’s actions,  
15 and business necessity has been characterized as an affirmative defense. *See Chevron U.S.A. Inc.*  
16 v. *Echazabal*, 536 U.S. 73, 79 (2002) (involving ADA claims).<sup>4</sup> In any event, parsing negative  
17 from affirmative defenses is unnecessary here because Arthur has made no showing that he will  
18 suffer prejudice if these defenses are not stricken or that striking them will avoid litigation of  
19 spurious issues. “[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and  
20 money that must arise from litigating spurious issues by dispensing with those issues prior to  
21 trial.” *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). Accordingly,  
22 Arthur’s motion is denied with regard to affirmative defenses 4, 6, 14, and 16.

## 23 V. CONCLUSION

24 While Rule 12(f) motions are disfavored for raising the costs of litigation, Arthur has

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26 <sup>4</sup> Affirmative defense 4 (“good faith dispute”) does appear to overlap with Constellation’s specific  
27 denials. *See* Cal. Code Regs. tit. 8, § 13520 (including in the definition of “willful failure to pay”  
an exception for “good faith disputes”).

1 established sufficient grounds on which to consider such a motion to strike. For the foregoing  
2 reasons, all affirmative defenses other than numbers 4, 6, 14, and 16 must be stricken with leave to  
3 amend. The seventeenth and twentieth affirmative defenses are deemed withdrawn.

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5 **IT IS SO ORDERED.**

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7 Dated: October 26, 2016

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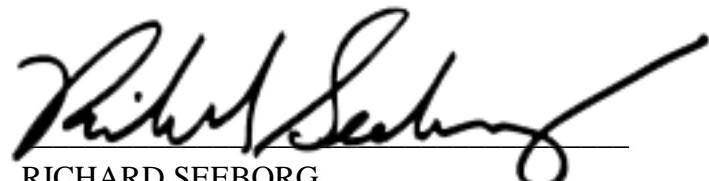
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RICHARD SEEBORG  
United States District Judge

United States District Court  
Northern District of California

ORDER RE: MOTION TO STRIKE  
CASE NO. [16-cv-04680-RS](#)